

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

MICHAEL M. CORJASSO, III,

Petitioner, 2:97-cv-0018-GEB-GGH-P

vs.

ROBERT AYERS, et al.,

Respondents. ORDER

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Petitioner, a state prisoner proceeding through counsel, has filed this application for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. The matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local General Order No. 262.

On March 9, 2006, the magistrate judge filed findings and recommendations ("F&Rs") herein which were served on all parties and which contained notice to all parties that any objections to the F&Rs were to be filed within twenty days. Petitioner has filed objections to the F&Rs.

In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C) and Local Rule 72-304, this court has conducted a de novo review of this case. As stated in the F&Rs, "counsel's oversight and workload do not constitute good cause for the delay in the presentation of [Petitioner's new] claims." (F&Rs at 5.) However, the portion of the F&Rs in which the

1 Magistrate Judge defines "good cause" by using the same factors that are used to define
2 "excusable neglect" in Pioneer Inv. Services, v. Brunswick Associates, 507 U.S. 394 (1993), a
3 bankruptcy case, is not adopted, since it is more appropriate to use the same standard a habeas
4 petitioner must satisfy in a procedural default case. "[T]o show "cause" for a procedural default,
5 a petitioner ordinarily must show that the default resulted from an objective factor external to the
6 petitioner which cannot fairly be attributed to him or her." Hernandez v. Sullivan, 397 F. Supp.
7 2d 1205, 1206-07 (C.D. Cal. 2005). Here, counsel's oversight does not constitute cause. Cf.
8 Johnson v. Sullivan, 2006 WL 37037, at *3 (C.D. Cal. Jan. 4, 2006) ("[A]n error of appellate
9 counsel on a discretionary appeal . . . cannot constitute cause to excuse a procedural default in a
10 federal habeas proceeding. Counsel's failure to raise the issue cannot be deemed 'good cause'
11 for the failure to exhaust state remedies.").

12 Accordingly, IT IS HEREBY ORDERED that:

- 13 1. The findings and recommendations filed March 9, 2006, are adopted as stated
14 above; and
15 2. Petitioner's January 24, 2006, motion to stay is denied.

16 Dated: June 5, 2006

17 /s/ Garland E. Burrell, Jr.
18 GARLAND E. BURRELL, JR.
19 United States District Judge
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